

MINUTES
BOARD OF ADJUSTMENT
November 1, 2007

THOSE IN ATTENDANCE:

Gary Soule, Chairman	Jason Jaggi, Planner
Mel Disney	Kevin O'Keefe, City Attorney
Victor Cohen	
Kevin Williams	

Chairman Soule called the meeting to order at 5:00 p.m. He welcomed everyone to the meeting, introduced himself and asked that the other members of the Board introduce themselves.

MINUTES

The minutes of the meeting of October 4, 2007 were presented for approval. The minutes were approved, after having been previously distributed to each member.

Chairman Soule indicated that there is only one item to be considered this evening and he understands that the property owners are being represented by Attorney Tom O'Toole. He stated that the members of this Board are appointed by the Mayor and approved by the City's Board of Aldermen and serve without monetary compensation. He indicated that a full compliment of the Board consists of five members; but that only four members were able to attend this evening. He stated that all four must vote in favor of a variance in order for a variance to be granted. He indicated that City staff tried very hard to get a full compliment of the Board for this evening, but was unsuccessful in doing so. He stated that the applicant must demonstrate practical hardship with regard to the property in order to justify the granting of a variance. He then advised that this is a duly advertised, duly noted meeting and that the proceedings are of record. He reminded everyone that all testimony is tape-recorded and the minutes produced from this recording. He then asked that all individuals wishing to speak to please speak clearly. He stated that generally, the City will present its exhibits first, after which the applicant will make their presentation, then questions/comments from the Board members will ensue after which audience comments will be solicited and finally, a vote will take place. He noted that this request originally appeared on the October agenda and was postponed to this meeting.

APPEAL FROM DAVID AND VIRGINIA FRANK FOR THE PROPERTY AT 838 N. BILTMORE DR.

Mr. Tom O'Toole, Jr., attorney representing the owners, Ms. Lauren Strutman, project architect, and Ms. Frank, were in attendance at the meeting.

Mr. O'Toole advised the members that Jason Jaggi informed him yesterday of the fact that staff was only able to secure four of the five member Board. He stated the importance of moving forward with this request since the garage has been demolished due to its condition and because of the upcoming winter months. He asked the Board for latitude and asked that if critical information is requested that cannot be produced tonight, that the request be tabled rather than receiving a negative vote.

Chairman Soule stated he understands the request and believes it to be appropriate. He informed Mr. O'Toole that he will have the opportunity, before the vote is taken, to discuss the situation with his clients and either request a vote, ask for a continuance or withdraw the request if that is what is desired.

Mr. O'Toole thanked Chairman Soule.

Everyone wishing to speak this evening was sworn in by the recording secretary.

Chairman Soule asked Jason Jaggi to begin the City's presentation with regard to the appeal.

Jason Jaggi addressed the Board by stating that staff typically has a PowerPoint presentation, but that the presentation that was prepared for this appeal is not available. He apologized. An aerial view of the site was shown. He indicated that the properties directly to the north, south and west of the subject lot are zoned R-2. The lot to the east (along Hanley) is zoned R-6 and contains a condominium building. He stated the new garage is proposed to be in the general location as the former garage.

Mel Disney asked when the demolition permit was issued.

Chairman Soule replied "December, 2006".

Chairman Soule asked if the City would like to present its Exhibits.

City Attorney O'Keefe presented the following exhibits with regard to the application. He asked that they be entered into the record on behalf of the City:

- A. City's Code of Ordinances, specifically Chapter 22, Section 15.8.3;
- B. City's Master Plan;
- C. Application for Zoning Review submitted by the applicant;
- D. Zoning Review denial letter;
- E. Application for Appeal;
- F. Drawings submitted by the applicant; and
- G. Staff Report.

Chairman Soule indicated that all Exhibits will be received.

Mr. O'Toole began a PowerPoint presentation.

Chairman Soule indicated that the PowerPoint presentation will be marked as applicant's Exhibit 1.

Mr. O'Toole stated the owners are asking for a variance from Section 15.8.3 of the Zoning Code. He stated he has concluded, and that he hopes the Board agrees, that staff supports the request. A slide depicting the original garage location was shown, depicting both side and rear yard encroachments. He stated that the Franks purchased the property in November, 2006 and that the purchase price negotiated because of the dilapidated foundation of the garage. He stated the garage would not have passed a City inspection. A slide depicting the proposed location of the new garage was presented. Mr. O'Toole stated they are asking for a 3.6-foot variance from the side yard setback requirement of 5-feet; the exact location along the side of the property of the former garage. Mr. O'Toole indicated that they have pushed the new garage further from the rear yard setback so it will now meet the rear yard setback requirement; therefore, only one variance is being sought. He stated that the new garage will reflect positively on the neighbors behind this property. Mr. O'Toole introduced Ms. Lauren Strutman, stating that she is a respected architect who has been engaged as the architect for this project. A slide depicting the front elevation was presented. Mr. O'Toole stated that the garage will be brick veneer with an architectural shingle roof that fits in with the architectural style of the home. Mr. O'Toole then referred to Section 8.5 of the City's Zoning Ordinance (Chapter 22), stating that there are two types of variances; one being a use variance and the other being an area variance. He stated they are not asking for a use variance and that an area variance is less restrictive. He stated that nothing the owners are requesting will change the character of the zoning district. He reiterated the request for a 3.6-foot variance, so the garage can be constructed 1.4-feet from the side property line. He stated that he does not believe this is a substantial variance and that the new garage will improve the character of the neighborhood and will benefit the adjoining neighbors and that the neighbors to the north will get exactly what they had before. He added that all of the neighbors support the garage/variance as well as Aldermen Alex Berger, who is in attendance this evening. He stated that today's standards require a larger garage; they are asking for a 22 X 22 garage to house two vehicles, which is the standard size or slightly smaller than a typical 2-car garage. He stated the practical difficulty is the need for a new garage due to the dilapidated condition of the former garage. Mr. O'Toole explained the difficulty with access to and from the garage if it were constructed in compliance with both the rear and side yard setbacks. He asked the Board for a favorable vote.

Mel Disney referred to the mention of the neighbor's support of this proposal. He asked Mr. O'Toole if he had documents indicating such support.

Mr. O'Toole replied "no". He stated Ms. Frank could be sworn-in to testify of her neighbors' support and have her relay the information she relayed to him.

Mel Disney commented that it was mentioned that the demolition was necessary due to an unsafe structure. He stated that one standard implemented by the City since the garage was built is the setback requirements. He stated that the back yard area shows paving, but he does not see a

motor court or turn-around area. He asked Mr. O'Toole if there is no feasible way to maneuver a car into the second garage stall.

Mr. O'Toole indicated that is correct. He stated the driveway hugs the north property line and the paved area is only 21 feet deep. He reiterated he believes the variance is appropriate due to these circumstances and that they have come in to ask for the least restrictive and most insignificant variance.

Ms. Strutman commented that the more the garage is moved, the more difficult it will be to maneuver a vehicle.

Kevin Williams stated he understands the accessibility difficulty.

Chairman Soule asked if 22 X 22 is the standard size for a 2-car garage.

Jason Jaggi replied "yes".

Chairman Soule asked if without a turn-around area, it would be a very difficult situation if the garage were placed 5 feet from the side property line.

Jason Jaggi replied "yes". He reminded the members that the proposed garage is in the same general location as the former garage.

Chairman Soule asked if granting this variance would observe the spirit of the zoning ordinance and secure public safety and welfare.

Jason Jaggi replied "yes".

Chairman Soule asked if it is common to find garages built on or near the property lines.

Jason Jaggi replied "yes"; he stated it is very common in Clayton to find garages built on or near the property lines.

Chairman Soule asked if the deviation from the strict application of the zoning ordinance authorized by the variance would not constitute a change in the district map, impair an adequate supply of light and air to adjacent property, increase the danger of fire or impair the public health, safety, comfort or welfare of the City.

Jason Jaggi agreed that it would not. He reiterated that the new garage does not deviate significantly from the previous garage and noted that the rear yard setback will now be met with this new garage.

Chairman Soule commented that if the garage were moved further to the south, that it would reduce the amount of greenspace and it was the owners' decision not to do that.

Jason Jaggi replied “yes”. He stated if the side yard setback were complied with, access to and from the garage would be extremely tight.

Mr. O’Toole asked his client if she wanted to proceed with a vote.

A brief recess took place while Mr. O’Toole conferred with Ms. Frank.

After the brief recess, Mr. O’Toole informed the Board that his client wished to proceed with a vote.

Being no further questions or comments, Chairman Soule moved to approve a variance from Section 15.8.3 of the Zoning Ordinance to allow the garage to encroach 3.6-feet into the 5-foot required side yard setback. The motion was seconded by Victor Cohen and received unanimous approval of the Board.

Chairman Soule advised the applicant that the variance is granted. He thanked Mr. O’Toole for the good presentation.

Mr. O’Toole thanked the Board.

Being no further business for the Board of Adjustment, this meeting adjourned at 5:50 p.m.

Recording Secretary